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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,376	10/22/2003	Ashish K. Verma	15436.247.51.1	4953

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EXAMINER

FLORES RUIZ, DELMA R

ART UNIT PAPER NUMBER

2828

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,376

Applicant(s)

VERMA ET AL.

Examiner

Delma R. Flores Ruiz

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-50 is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/24/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 11/24/2005 have been considered by the examiner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1– 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 –27 of U.S. Patent No. 6,647,041. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitation of claim 1, of the current application

are claimed in claim 1 and 6 of '041 and is obvious use a substrate and a surface emitting laser to produce a optical transmitter suitable for use in connection with an optical communication system.

Allowable Subject Matter

Claims 30 – 50 are allowed.

The following is an examiner's statement of reasons for allowance: Claim 30 recites "an optical transmitter and optical amplification suitable for use in connection with an optical communications system that includes an optical fiber transmission medium, the optical transmitter" structure including the specific structure limitation of *substrate, laser, top and bottom mirror, first and second semiconductor layer doping type where second doping type is different from the first doping type, active region , a third semiconductor layer of the second doping type, wherein the second and third semiconductor layers are in direct contact with each other, and an interface between the second and third semiconductor layer is characterized by at least one of; lattice mismatch and trap-like defect; and concentration of dopant of the second doping type located in close proximity to the interface between the second and third semiconductor layer, wherein the concentration of dopant of the second doping type is in addition to*

bulk dopant concentrations in either the second semiconductor layer or the third semiconductor layer which is neither anticipated or disclosed nor suggested in any piece of available prior art, which is neither anticipated nor obvious over the prior art of record.

Claims 45 and 48 recites a "an optical transmitter and optical amplification suitable for use in connection with an optical communications system that includes an optical fiber transmission medium, the optical transmitter" structure including the specific structure limitation of "*substrate, VCSEL, top hybrid mirror, bottom Bragg reflector, bottom cladding (n-InP, top cladding (p-InP), active region, a confinement layer (p-GaAs/AlGaAs) in direct contact with the top cladding, and an interface between the top cladding layer and confinement layer being characterized by at least one of; lattice mismatch and trap-like defect; and concentration of n-type dopants located in close proximity to the interface between top cladding and the confinement layer, wherein the concentration of n-type dopants is in addition to bulk dopant concentrations in either the top cladding layer or the confinement layer*" which is neither anticipated or disclosed nor suggested in any piece of available prior art, which is neither anticipated nor obvious over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delma R. Flores Ruiz whose telephone number is (571) 272-1940. The examiner can normally be reached on M - F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Min Sun Harvey can be reached on (571) -272-1835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Delma R. Flores Ruiz
Examiner

Art Unit 2828
DRFR/MH
July 27, 2005



JAMES
MENEFEE

for
Min Sun Harvey
Supervisor Patent Examiner
Art Unit 2828